

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

MONDAY, THE 15TH JANUARY 2007 / 25TH PAUSHA 1928

O.P.No. 22873 of 1999(W)

PETITIONER:

M.V.ARUMUGHAN,
WORKSHOP FOREMAN,
GOVERNMENT PRESS, SHORANUR.

BY ADV. SRI.P.RAVINDRAN

RESPONDENTS:

1. STATE OF KERALA, REPRESENTED BY
THE COMMISSIONER & SECRETARY TO
GOVERNMENT, HIGHER EDUCATION (H)
DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.
2. THE DIRECTOR OF PRINTING & STATIONARY,
(PRINTING), THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SRI.NOBLE MATHEW

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD
ON 15/01/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

ORDER ON C.M.P.NO.37918 OF 1999 IN O.P.NO.22873 OF 1999

DISMISSED

15.01.2007

Sd/- SIRI JAGAN, JUDGE

APPENDIX

PETITIONERS EXHIBITS:

EXT.P1: COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER DATED 31.3.1998 BEFORE THE 2ND RESPONDENT.

EXT.P2: COPY OF THE REPRESENTATION SUBMITTED BEFORE THE 1ST RESPONDENT BY THE PETITIONER DATED 18.9.1998.

EXT.P3: COPY OF THE JUDGMENT PF THIS HON'BLE COURT IN O.P.16696/93 DATED 17.7.1998.

EXT.P4: COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN O.P.8760/96.

EXT.P5: COPY OF THE JUDGMENT IN O.P.NO.2249/99 DATED 28.1.99.

EXT.P6: COPY OF THE ORDER NO.930/99/DATED 12.8.99.

TRUE COPY

P.A.TO JUDGE

S.SIRI JAGAN,J

O.P.NO.22873 OF 1999

DATED THIS THE 15TH DAY OF JANUARY,2007

JUDGMENT

The petitioner was a Foreman (workshop) in the Printing Department of the Government of Kerala. Printing Department consists of several branches namely General, Composing, Mechanical, Foundary, Type Store, Reading, Machine, Warehouse, Binding, Workshop, Computing and Miscellaneous. In these several branches there are comparable posts holding the same scale of pay. Some of the employees, who were actually junior to the petitioner taking into account their comparative dates of promotion, were drawing more pay than the petitioner in comparable posts. On this ground the petitioner raises a claim that his pay should be stepped up to that of the persons who were Junior to him in the comparable posts in other branches. The same was rejected by Ext.P6 order of the Government holding that the stepping up of pay in parity with that of the Junior arises only when two employees are in the same branch and since there is no inter-se seniority between the petitioner and the alleged junior, he cannot claim stepping up of pay on par with the alleged junior. It was held in Ext.P8 that since the other persons with whose pay the

petitioner claimed parity were of a different branch having no inter-se seniority between them and therefore, the question of stepping up of pay in parity with that of the Junior does not arise at all. This Ext.P6 order is challenged in this Writ Petition.

2. The petitioner's contention is that even though there is no inter-se seniority between those persons mentioned in Ext.P6 and the petitioner, since these are identical posts having the same scale of pay and going by clause (a) or Ruling No. 1 under Rule 28 (a) of Part I of the Kerala Service Rules such stepping up is permissible. This is disputed by the learned Government Pleader with the support of the counter affidavit filed on behalf of the first respondent. According to the first respondent in the Printing department there are several branches and there is no inter-se seniority between persons of these separate branches and therefore there is no question of inter-se seniority between the petitioners and the others mentioned in Ext.P6 so as to enable the petitioner to claim stepping up of pay on par with the pay drawn by persons holding equivalent posts in other branches persons though could be termed as junior to the petitioner going by the date of promotion alone.

3. I have considered the rival contentions in detail.

4. Ruling No.1 under Rule 28 A reads thus.

"In cases where the application of the rule would give rise to anomalies in as much as an officer Officiating in a higher post could get his pay

refixed at a pay, the anomaly will be removed by refixing the pay of the senior officer at the stage equal to that fixed for the junior officer in the higher post, the orders of refixation being issued by the Competent Authority under Rule 34, Part I, Kerala Service Rules. The refixation of pay in such cases will be made subject to the following conditions:-

(a) Both the junior and senior officers should belong to the same cadre and the post in which they have been promoted or confirmed, as the case may be, should be identical and in the same cadre.

(b) The scale of pay of the lower post in which they would have drawn their pay but for their promotion or confirmation should be identical.

(c) The anomaly should be directly as a result of the application of Rule 28 A. For example, if the junior officer draws from time to time a higher rate of pay than the senior by virtue of fixation of pay under the normal rules or any advance increment granted to him, the provision contained in this ruling should not be invoked to step up the pay of the senior officer.

(d) The refixation of pay of the senior officer should be done with effect from the date of refixation of pay of the junior officer. The next

increment of the senior officer will however be drawn on the date on which it would have fallen due but for this refixation of pay.”

5. Going by Clause (a) the same would be applicable only if the junior and senior officers belong to be the same cadre and the post in which they have been promoted or confirmed, as the case may be, should be identical and in the same cadre. The word 'cadre' is defined in Rule 12 (4) of Part I of Kerala Service Rules which reads as follows:

“Cadre:- Means the strength of a service or part of a service sanctioned as a separate unit.”

Going by this definition of cadre and Clause (a) of Rule I of Rule 28 A, I am satisfied that the petitioner and the others mentioned in Ext.P6 are not of the same cadre and the posts which they have been promoted to are not identical and in the same cadre. That being so the petitioner cannot claim parity in pay in accordance with Rule 28 A of the Kerala Service Rules. In that view I do not find any merit in this Writ Petition. Accordingly, the same is dismissed.

S.SIRI JAGAN,JUDGE

dvs